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**TRANSMITTAL  
FORM**


(to be used for all correspondence after initial filing)

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/608,223	
	Filing Date	June 30, 2003	
	First Named Inventor	Leslie R. SHERRILL	
	Art Unit	3644	
	Examiner Name	Judith A. Nelson	
Total Number of Pages in This Submission		Attorney Docket Number	006484.00010

**ENCLOSURES (check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Reply  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input checked="" type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Request for Reconsideration
<div>Remarks</div>		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Jordan N. Bodner, Registration No. 42,338
Signature	 Robert S. Katz Reg 36,402 for JNB
Date	June 17, 2004

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name			
Signature		Date	

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# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 950

## Complete if Known

Application Number	10/608,223
Filing Date	June 30, 2003
First Named Inventor	Leslie R. SHERRILL
Examiner Name	Judith A. Nelson
Art Unit	3644
Attorney Docket No.	006484.00010

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money ☐ Other ☐ None  
Order

☒ Deposit Account:

Deposit  
Account  
Number

19-0733

Deposit  
Account  
Name

Banner & Witcoff, LTD.

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments  
☒ Charge any additional fee(s) during the pendency of this application  
☐ Charge fee(s) indicated below, except for the filing fee  
to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$ 0)

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		Extra Claims		Fee from below		Fee Paid	
Independent Claims		0		X		0	
Multiple Dependent		0		X		290	

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0)

\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	950
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 950)

## SUBMITTED BY

Name (Print/Type)	Jordan N. Bodner	Registration No. (Attorney/Agent)	42,338	Telephone	202-824-3000
Signature	[Signature] Reg No 36,402 for JNB			Date	June 17, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application Of )

Leslie R. Sherrill et al. )

Serial No.: 10/608,223 )

Filed: June 30, 2003 )

Group Art Unit: 3644

Examiner: Judith A. Nelson

Atty. Dkt. No. 006484.00010

For: Dog Bone With Jerky Pieces and Method for Making

**REQUEST FOR RECONSIDERATION**

U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street S.  
Customer Window,  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Sir:

This paper is responsive to the non-final Office Action mailed December 17, 2003. Reconsideration and allowance are respectfully requested in view of the following remarks. Claims 1-19 remain pending.

Claims 1 and 8-10 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,223,693 to Perlberg et al. ("Perlberg"). Claims 2-7 and 12-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Perlberg in view of U.S. Patent No. 6,227,420 to Anderson et al. ("Anderson"). Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Perlberg in view of U.S. Patent No. 5,456,933 to Lee ("Lee"). Applicants respectfully traverse all rejections.

**Independent Claim 1**

Independent claim 1 recites an animal chew comprising a composite of animal hide bits, adherent, and discrete pieces of flavor product interspersed in the composite. Perlberg, however,

fails to teach or suggest a product having discrete pieces of flavor product. Although flavors may be added to a soft rawhide product as disclosed in Perlberg at col. 4, lns. 51-57, there is no teaching or suggestion that such flavors are embodied as *discrete pieces* of flavor product. Nor is it inherent that flavors must be discrete pieces of flavor product. The fact that a certain characteristic *may* be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP 2112. Inherency may not be established by probabilities or possibilities. MPEP 2112; *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). The allegedly inherent characteristic must *necessarily* flow from the teachings of the applied prior art. MPEP 2112; *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). However, it is not necessary that the flavors mentioned in Perlberg be *discrete pieces* of flavor product as claimed.

Indeed, it appears that Perlberg in any event does not use discrete pieces of flavor product. Instead, Perlberg discloses *soaking* the untanned skins of animals in a humectant containing colors, flavors, scents, etc. Perlberg, col. 2, lns. 10-26; col. 3, lns. 28-32. Perlberg further discloses that the humectant and its additives (such as flavors) are combined and mixed together, and the components are dissolved. Col. 4, lns. 51-57.

For at least these reasons, it is respectfully submitted that claim 1 is allowable over Perlberg.

#### **Independent Claim 8**

Independent claim 8 is also allowable over Perlberg for at least similar reasons as claim 1, and further in view of the differing features recited therein.

#### **Independent Claim 12**

Independent claim 12 recites an animal chew comprising a body having a plurality of bound animal hide bits, and a plurality of discrete jerky pieces. As discussed above with regard to claim 1,

Perlberg fails to teach or suggest a product having discrete pieces of flavor product. Even more so, Perlberg also fails to teach or suggest a product having a plurality of *discrete jerky pieces* as required by claim 12.

The Office Action asserts that Anderson teaches the use of a pet chew comprising jerky, alleging that jerky is dried meat slices/chunks, as a flavor member in a chew, referring to Anderson's Background of the Invention at col. 1, lns. 30-39. However, Anderson fails to provide any detail as to how such conventional jerky products are configured. Nor does Anderson state that jerky is used as a flavor member in these conventional products, as opposed to being the entire product itself. Thus, again, Anderson fails to teach or suggest a product having a plurality of discrete jerky pieces as recited in claim 12.

Anderson further discloses that the product of Anderson's invention has a "meaty filling" (col. 3, lns. 49-50). Anderson also does not teach or suggest the meaty filling is a plurality of discrete jerky pieces. Any combination of Perlberg and Anderson still would not result in the claimed invention.

For at least these reasons, it is respectfully submitted that claim 12 is allowable over Perlberg and Anderson, either alone or in combination.

#### **Independent Claim 16**

Independent claim 16 recites a method of making an animal chew comprising providing animal hide bits, mixing adherent with the animal hide bits to form a paste, providing flavor chunks, and encasing the flavor chunks in the paste. Again, as previously discussed, Perlberg fails to teach or suggest a product having discrete pieces of flavor product. Similarly, Perlberg also fails to teach or suggest making a product having flavor *chunks* as required by claim 16.

Perlberg also fails to teach or suggest encasing flavor chunks (or anything, for that matter) in a paste. The Office Action refers to Perlberg at col. 5, lns. 39-41, however this merely discloses that a sheet of soft rawhide, hard rawhide, or some other suitable edible material can be formed around a soft or hard chopped rawhide portion. However, Perlberg fails to teach or suggest that the outer sheet layer is a *paste*. Nor is it inherent that the outer sheet layer is a paste. As discussed previously, an allegedly inherent characteristic must *necessarily* flow from the teachings of the applied prior art. In the present case, it is not necessary that the outer sheet layer of Perlberg is a paste.

Anderson does not teach or suggest what is deficient from Perlberg. Anderson instead discloses that a meaty filling is inserted into the cavity of a rawhide roll. Anderson, col. 7, ln. 56, to col. 8, ln. 33. However, the outer rawhide roll is not a paste as claimed.

For at least these reasons, it is respectfully submitted that claim 16 is allowable over Perlberg and Anderson, either alone or in combination.

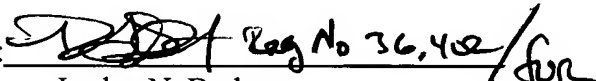
**Dependent Claims**

Claims 2-7, 9-11, 13-15, and 17-19 are also allowable for at least those reasons that their respective independent claims are allowable, and further in view of the additional features recited therein. Moreover, Lee fails to teach or suggest what is deficient in Perlberg and Anderson as discussed previously.

**Conclusion**

For at least the reasons set forth above, Applicants submit that the pending claims distinguish over the applied references, and are in condition for allowance. Should the Examiner feel that further discussion and/or amendment would be helpful in the prosecution of this application, she is invited to telephone the Applicants' undersigned representative at the number appearing below.

Respectfully Submitted,

By:  Reg No 36,412 / JNB  
Jordan N. Bodner  
Registration No. 42,338

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Dated: June 17, 2004